



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 7, 1998

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR98-1886

Dear Mr. Steiner:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117207.

The City of Austin (the "city") received a request for a variety of information, including a copy of proposals received in response to the city's request for proposal regarding the collection of delinquent utility accounts. You explain that some of the information requested has been marked as proprietary and ask this office to determine if this information is protected from disclosure. We note that since the city raises no objections to release of the other categories of information requested, we assume that the remaining responsive information has been released.

We notified Credit Systems International, Inc. ("Credit Systems") and the Gila Corporation, which is doing business as Municipal Services Bureau ("MSB") of the request for information and of their opportunity to claim that their proposals are excepted from disclosure. *See* Gov't Code § 552.305. You indicate that MSB marked sections of its proposal that it considers to be proprietary, including its client list and user manual. MSB appears to assert that this information is protected from disclosure under section 552.110 of the Government Code. Section 552.110 protects the property interests of third parties by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. However, MSB has not explained how section 552.110 is applicable to its proposal. *See* Open Records Decision No. 363 (1983) (third party has duty to establish how

and why exception protects particular information). Therefore, this office has no basis on which to conclude that any information submitted to the city by MSB is confidential. The MSB information must be released.

Credit Systems asserts that the portion of its proposal titled "Account Agenda" and other sections that contain client information are protected trade secrets under section 552.110 of the Government Code. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts.<sup>1</sup> *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).<sup>2</sup> This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.

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<sup>1</sup>Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added).

<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

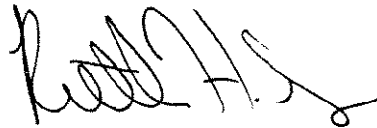
- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

Credit Systems details the steps that it has taken to protect its client information and explains how release of this information could allow competitors to solicit these clients. Credit Systems has shown that its client information in the proposal, which we have marked, constitutes trade secret information and must be withheld from disclosure. However, Credit Systems has not shown the applicability of section 552.110 to the remaining information. Thus, except for the marked client information, the proposal must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 117207

Enclosures: Submitted documents

cc: Mr. Bruce Elfant  
Constable, Precinct 5  
Travis County  
P.O. Box 1748  
Austin, Texas 78767  
(w/o enclosures)